

Before the
Administrative Hearing Commission
State of Missouri



TOM DAWSON d/b/a CEDAR LAKE
LODGE,

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 12-1516 RS

DECISION

Tom Dawson is liable for sales tax of \$26,813.68, additions to tax of \$1,340.68, and statutory interest on receipts for food, beverages, lodging and other taxable services rendered at Cedar Lake Lodge (“Cedar Lake”), as assessed by the Director of Revenue (“Director”).

Procedure

On August 14, 2012, Dawson filed a complaint challenging the Director’s final decision that he owed \$26,813.68 in unpaid sales tax, plus statutory interest and additions to tax. The Director filed his answer on September 14, 2012.

Pursuant to our written notice, a hearing was convened on June 6, 2013, but Dawson failed to appear. On June 19, 2013, Dawson sent correspondence to this Commission indicating that he inadvertently missed the hearing date, which we took as a request to set aside the dismissal and reopen the case. The matter was reopened and set for a hearing on July 18, 2013, but was postponed due to the Director’s request for a continuance. We held a hearing on

October 24, 2013. Dawson appeared *pro se*. Thomas A. Houdek represented the Director. This case became ready for decision on February 25, 2014, when the last written argument was due.

Findings of Fact

1. At all times relevant to these findings, Dawson owned and operated Cedar Lake as a hunting, fishing, and recreational lodge in New Bloomfield, Missouri.

2. Cedar Lake has four suites and is host to hunting and fishing expedition packages that include lodging and meals. There is a restaurant on the premises where food and drinks are sold.¹

3. In 2009, Dawson founded the Sportsman's Research & Cultural Arts Foundation, an organization tax exempt under 26 USC § 501(c)(3). This foundation is independent of Cedar Lake, but it does still feature the restaurant.

4. Cedar Lake ceased to exist in September 2013.

The Audit and Proceedings Before the Director

5. On June 28, 2011, the Director commenced an audit of Cedar Lake from April 1, 2008 through March 31, 2012.

6. The Director requested sales records, purchase invoices, withholding tax records, and other business records pertaining to taxable sales at Cedar Lake for the audit period. In response to the request, Dawson provided irrelevant records that pre-dated the audit period.

7. The Director proceeded with the audit by obtaining Cedar Lake's bank records.

8. The bank records showed deposits from credit card transactions processed for Cedar Lake's sales, but no cash deposits.

9. Because records of cash receipts for the audit period were not produced, and no deposits from cash sales were made into the bank account, the Director used 34% of total credit

¹ The name of the restaurant at Cedar Lake has been known as Tonanzio's in the Country. The bank account for the business was in the name of the restaurant during the audit periods.

and debit card bank deposits to calculate the amount of cash sales that took place during that time.

10. The Director obtained the rate of 34% to calculate cash sales from total credit card sales from a survey developed by the Federal Reserve Bank of Boston.

11. On June 22, 2012, after taking into account interest and payments applied, the Director issued a final decision against Dawson, assessing \$26,813.68² in sales tax, \$1,332.22 in additions to tax, plus statutory interest.

12. On August 14, 2012, Dawson appealed the Director's final decision to this Commission.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.³ Taxing statutes are strictly construed against the taxing authority.⁴ The taxpayer has the burden to prove that it is not liable for the tax imposed.⁵ Our duty in a tax case is not merely to review the Director's decisions, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.⁶ Where, as here, the burden is upon the taxpayer to demonstrate at least a reasonable dispute with respect to the amount of sales tax owed and he has failed to meet it, it is up to the Commission to make its best approximation of the liability, resolving any doubt against the taxpayer responsible for the uncertainty.⁷

Section 144.020.1(2) imposes a sales tax on sellers of tangible personal property and taxable service at retail at a rate of four percent on the amount paid. With the addition of local

² According to the auditor, this amount reflects credit for what Cedar Lake reported for the audit period.
Tr. 27.

³ Sections 144.261 and 621.050.1. All statutory references are to RSMo 2000, unless otherwise noted.

⁴ *May Dept. Stores Co. v. Dir. of Revenue*, 791 S.W.2d 388, 389 (Mo. 1990).

⁵ Sections 621.050.2 and 136.300.

⁶ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁷ *See, Dick Proctor Imports v. Director of Revenue*, 756 S.W.2d 571, 575 (Mo. banc 1988).

taxes applied to sales in New Bloomfield, the total rate for sales tax on taxable transactions at Cedar Lake was 5.725 percent.

Section 144.021 provides:

The purpose and intent of sections 144.010 to 144.510 is to impose a tax upon the privilege of engaging in the business, in this state, of selling tangible personal property and those services listed in section 144.020. The primary tax burden is placed upon the seller making the taxable sales of property or service and is levied at the rate provided for in section 144.020. Excluding sections 144.070, 144.440 and 144.450, the extent to which a seller is required to collect the tax from the purchaser of the taxable property or service is governed by section 144.285 and in no way affects sections 144.080 and 144.100, which require all sellers to report to the director of revenue their “**gross receipts**”, defined herein to mean the aggregate amount of the sales price of all sales at retail, and remit tax at four percent of their gross receipts.

Section 144.320 provides:

Every person engaged in the business as defined in section 144.010 of this chapter in this state shall keep such records and books as may be required by title 26, the United States Code, for federal income tax purposes. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the director of revenue or his duly authorized agents and employees. Such books and records shall be preserved for a period of at least three years, unless the director of revenue, in writing, authorized their destruction or disposal at any earlier date.

Section 144.430 provides:

For the purpose of ascertaining the correctness of any return or for the purpose of determining the amount of tax due from any person, the director of revenue or any employee of the director of revenue designated in writing by the director of revenue, may hold investigations and hearings concerning any matters covered by sections 144.010 to 144.510, and may examine any books, papers, records or memoranda bearing upon such sales by any such person and may require within the county where the person resides or does business the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for his information. In the conduct of the investigations or hearing, neither the director of revenue nor any employee thereof shall be

bound by the technical rules of evidence and nor informality in the proceedings, or in the manner of taking testimony shall invalidate any order, decision, rule or regulation made or approved or confirmed by the director of revenue. The director of revenue or any employee thereof holding such investigation shall have power to administer oaths to such person or witnesses.

While the Director was authorized to conduct an investigation and examine the books and records of Cedar Lake to determine the correctness of its sales tax returns, he could not examine paper records kept by the business for the audit period because they were not provided.

Determination of Cash Sales

Relying instead upon the bank records, the Director discovered there was no information on cash sales because the proceeds were not deposited in the bank account under review. Therefore, the Director determined the returns made for sales taxes derived from the business were not satisfactory in that they failed to fully account for gross receipts on taxable transactions.⁸

Section 144.210.2 provides:

If the director of revenue is not satisfied with the return and payment of the tax made by any person, he is hereby authorized and empowered to make an additional assessment of tax due from such person, based on the facts contained in the return or upon any information within his possession or that shall come into his possession.

Section 144.250.4 requires:

Except in cases of fraud or evasion, if a person neglects or refuses to make a return and payment as required by sections 144.010 to 144.525, the director of revenue shall make an estimate based upon any information in his possession or that may come into his possession of the amount of the gross receipts of the delinquent for the period in respect to which he failed to make a return and payment, and upon the basis of said estimated amount compute

⁸ In addition to not fully reporting gross receipts, the returns filed regarding Cedar Lake also claimed some exemptions from tax for certain transactions, which could not be verified as exempt because there were no paper records provided for the audit period. *Tr.* 25-26.

and assess the tax payable by the delinquent; such estimate may be reconstructed for that period of time for which the tax may be collected as prescribed by law.

Thus, the Director was required to make an estimate of the sales taxes due from Cedar Lake based on the information available to him. Having no records of cash receipts for the business, the Director used a study conducted by the Federal Reserve Bank of Boston.⁹ Based upon the research findings presented, 37% of essential retail payments (examples of which include restaurant food purchases) are made with cash. The Director lowered this rate and estimated the amount of undocumented cash sales to be 34% of the credit and debit card receipts, deposits for which were found in the bank records for Cedar Lake. Thus, the gross receipts were calculated by adding credit card deposits and estimated cash receipts derived therefrom within the audit period. We find that the gross receipts were properly and reasonably calculated upon the information in the Director's possession at the time of the audit.

Additions to Tax

In addition to the appropriate estimated tax, the Director charged Dawson additions to tax in his assessments for unpaid sales tax.

Section 144.250.3 provides:¹⁰

In the case of failure to pay the full amount of tax required under sections 144.010 to 144.525 on or before the date prescribed therefor, determined with regard to any extension of time for payment, due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

Negligence is a failure to make a reasonable attempt to comply with the tax laws.¹¹ Dawson failed to keep and provide records that it was his duty to maintain for the audit periods, and

⁹ The research underlying the presentation was contained in a paper entitled, "The 2008 Survey of Consumer Payment Choice," written by Scott Schuh, Kevin Foster, Eric Meijer, and Michael Zabeck and based upon a national survey undertaken by the Federal Reserve Bank of Boston and the RAND Corporation. *Respondent's Exhibit 1 at S12-S42*.

¹⁰ RSMo Cum. Supp. 2013. This section was last amended in 2003.

¹¹ *Hiatt v. Director of Revenue*, 899 S.W.2d 870, 872 (Mo. banc 1995).

despite being afforded ample time to produce bank records in lieu of receipts, invoices, and other documents, he did not comply with the Director's written and verbal requests for them. We therefore find that additions to tax of five percent of the deficiency is owed. Based on the Director's determination that Dawson owes \$26,813.68 in additional sales tax, we calculate five percent of that amount to be \$1,340.68.

Dawson's Tax Liability

Dawson failed to provide any substantial evidence that the Director's audit findings and calculations were not accurate for the audit period. We have reviewed the audit package and find no error in the Director's analysis underlying his calculations used to estimate gross receipts and the taxes due on them.

Interest

Section 144.170 imposes interest on delinquent sales tax and use tax, as calculated by § 32.065. Therefore, Dawson is liable for this statutory interest on the delinquent sales tax liability that is assessed against him for the periods at issue.

Summary

Dawson is liable for sales tax and additions to tax on the sale of food, beverages, lodging, and other taxable services provided to the public at retail at Cedar Lake of \$26,813.68 and \$1,340.68 respectively, plus statutory interest.

SO ORDERED on July 11, 2014.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner